IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 11 OF 1994

Babubhai Chhanaalal Satwara, since deceased his LRs: 1. Kantaben Babhubhai Satwara, Age 56 yrs. 1B. Dharmendra Babhubhai Satwara, age 30 yrs. Both Bombay Indian Inhabitants, R/at Palanji Sojpal Bldg.,RBSK Bole Rd., Near D'Silva School, Dadar (W), Mumbai -28. 1C. Mrs. Meena Pravin Mistry, age 43 yrs. R/at B/10,Neel Kamal, 2, Ayojak Nagar, Jivraj Park, Ahmedbad -380 007. 1D. Anita Ajay Shrimali, age 35 yrs. R/a. 29, Panchavati, Devan Ajwa Rd., Vadodara -390 019. 1E. Hemina Ashish Contractor, Age 34 yrs., R/at. 53, Datta-Mandir Society, Paldi, Bhattha Near Ram Mandir, Ahmedabad.	.. Petitioners (Org.Defts.)
V/s.	
Smt.Sunder Ratansi Shah, deleted and substituted by : 1(a) Kishor R. Shah 1(b) Kirit R.Shah 1(c) Avanti D.Shah 1(d) Bijal D.Shah 1(e) Bhavik D. Shah All adults Indian Inhabitants, R/at. Palan Sojpal Bldg.,Rao	.. Respondents. (Org.Pltffs.)

Bahadur S.K.Bole Rd., Dadar,
Mumbai - 400 028.

Mr.K.D.Shah for the Petitioners.

Mr.Anoop Sharma for the Respondent Nos.1(b).

CORAM : S. A. BOBDE, J.

DATED : 03rd JULY, 2007.

ORAL JUDGMENT :-

. This Civil Revision Application is directed against the order of the learned Judge of the City Civil Court, dated 30th November, 1993 in respect of the valuation of the suit under section 8 of the Suits Valuation Act. The Respondent-Plaintiff has sued the Petitioner-Defendant for possession of the entire open space behind the plaintiff's property known as Palan Sojpal Building by removing the shed with its extension thereon allegedly, unauthorizedly put up by the petitioner.

2. The Plaintiff valued the claim in the suit at Rs.10,000/- being the market value of the entire open space and for reliefs in respect of the trespass by the Defendant at Rs.4,275.

3. Upon the Defendants raising a plea that the suit

is not properly valued, it was referred to the Registrar of the City Civil Court under section 8 of the Suits Valuation Act. The Registrar prepared a report that the valuation of the property should be made on the basis of the market value of the property at Rs.1,69,500/-. The Registrar has computed the market value on the basis of the entire area, which is said to have trespassed upon and on the basis of that a shed thereon, admeasures more than 8000 sq.ft..

4. The Plaintiff preferred objection to the report of the Registrar under section 8 of the Suits Valuation Act. The learned Judge of the City Civil Court at Bombay heard the objections and observed that the valuation by the Registrar is not correct and the correct valuation should be at Rs.33,750/- plus the compensation claimed in the plaint. The learned Judge has excluded the value of the land completely since according to him under the Municipal Law, it was compulsorily required to be kept open. This is what led to the gross anomaly in the two assesments.

5. Mr.Shah, the learned counsel for the petitioner submitted that there is no basis for excluding the open land only because construction cannot be made on it. He pointed out that it is settled law that the Municipal

Land is subjected to the taxation even if it is not open, as held in **AIR 1978 Bom.382.** Since there is no direct decision on the point; an inference can be drawn from the above referred decision of this court in AIR 1978 Bom.pg. 382; that the municipal land, whether capable of being constructed upon or not, is susceptible to the valuation and, therefore, to taxation. In any case, it can be safely inferred that all lands, particularly, within the urban agglomeration are susceptible to valuation whether a construction over such a land is permissible.

6. Under these circumstances, the order of the learned City Civil Court dated 30th November, 1993 is set aside and the valuation made by the Registrar by order dated 26th April, 1993 is hereby accepted. The Respondent is directed to pay the court fees accordingly.

7. Mr.Anoop Sharma, the learned counsel for the Respondent prays for stay of this order. Application for stay is rejected.

(S.A.BOBDE,J.)

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